

# EXHIBIT 1

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

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4 **HONORABLE MARGARET M. MORROW, JUDGE PRESIDING**

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6 JIPC MANAGEMENT, INC., :

:

7 PLAINTIFF, :

:

8 VS. :

NO. CV 08-4310-MMM

:

9 INCREDIBLE PIZZA CO., INC., :  
10 ET AL., :

:

11 DEFENDANT. :

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 LOS ANGELES, CALIFORNIA

17 MONDAY, JULY 13, 2009

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22 MARK SCHWEITZER, CSR, RPR, CRR  
23 OFFICIAL COURT REPORTER  
24 UNITED STATES DISTRICT COURT  
25 181-H ROYBAL FEDERAL BUILDING  
255 EAST TEMPLE STREET  
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1           Let's turn to the pretrial conference order and the  
2 balance of the pretrial conference issues.

3           First of all, I noted the statement, at the  
4 beginning of the pretrial conference order, that the parties  
5 want to essentially prepare an amended order once the motions  
6 in limine have been ruled on, and, you know, the summary  
7 judgment order was finished, but apparently the clerk's office  
8 failed to file it. So for that I apologize. There was some  
9 kind of clerical mix-up in that.

10           But you have that now, too. So I don't know that we  
11 have to spend a great deal of time going, you know, paragraph  
12 by paragraph or section by section through this pretrial  
13 conference order. There are, however, a few things that I  
14 wanted to bring to counsels' attention.

15           Starting on page 20, line 5, which is the discussion  
16 of the May 2000 telephone conversation, to the extent that the  
17 Court concludes that that is excludable under 408, then that  
18 text, I think, would need to come out. There is also in the  
19 following paragraph a discussion of a statement of use signed  
20 by Mr. Barsness.

21           What exactly does plaintiff perceive to be the  
22 relevance of that?

23           MR. KLEIN: Your Honor, the defendants have  
24 indicated that they intend on introducing and relying on their  
25 federal registration. We have alleged that that registration

1 is invalid for, among other things, fraud. And the submission  
2 of the statement of use is one of the bases for that  
3 contention. The statement of use claim that defendants were  
4 using the mark, had begun using the mark in commerce, and two  
5 examples were provided. One was business stationery for  
6 Springfield's Incredible Pizza Company as well as a mock-up of  
7 what the store was going to look like. And this was submitted  
8 before -- far before the store ever opened.

9 So in fact there was no use in commerce which would  
10 support the claim that that was the basis for these. And then  
11 the other type of evidence which was submitted was evidence of  
12 use by Mason Scott's company in Amarillo. And again, we  
13 contend that that use was not -- that wasn't licensed. That  
14 wasn't with the approval -- well, whether or not --

15 THE COURT: Let's see if I could understand this.  
16 You are suggesting that the defense is going to introduce the  
17 federal registrations to show lack of confusion?

18 MR. KLEIN: Among other things, yes. They have  
19 argued that the issuance of that registration by -- and the  
20 subsequent issuance of our registrations demonstrates that the  
21 PTO termed that there wasn't confusion between the two marks.

22 THE COURT: And the statement of use and this other  
23 evidence that you're referencing is the subject of your  
24 cancellation proceeding before the TTAB; right?

25 MR. KLEIN: Right. Which has been stayed.

1 THE COURT: Right. But we're not trying that here.

2 MR. KLEIN: We have included those allegations in  
3 our complaint.

4 THE COURT: You don't have a claim for cancellation  
5 of their mark.

6 MR. KLEIN: That is correct. But I'm not sure we  
7 would need it to rebut -- I don't think we need to cancel it  
8 to show that it's -- to overcome the presumption that the mark  
9 is entitled to.

10 THE COURT: Well, it's not being introduced for  
11 presumption. It's being introduced to suggest that the PTO  
12 found that there was no likelihood of confusion between these  
13 two marks because it registered both of them. A weak  
14 inference at best, but in any event, since they register all  
15 kinds of things that ultimately turn out to be confusingly  
16 similar.

17 So my concern about this, and I'll invite both  
18 parties, if you would like, to submit briefs to me of no more  
19 than five pages on this issue, is this feels to me like a  
20 tangential issue that is going fairly far afield of what the  
21 actual claims are that are going to be tried in this case and  
22 that it would suggest to the Court that it was properly  
23 excluded under 403 because it's just going to consume a lot of  
24 time getting into a sizeable debate about whether or not the  
25 defendants committed fraud before the PTO in registering their

1 marks.

2 But go ahead and file something on that issue by  
3 the -- by the 27th. Either party who wishes to address it.

4 The other thing that I'd like the plaintiffs to  
5 think about is they have here, putting aside attorneys' fees  
6 claims, four claims for essentially the same thing. I mean  
7 four different legal bases for essentially the same thing.

8 I would like the parties to confer as to whether or  
9 not they could enter into some kind of a stipulation that  
10 would allow us to try one of these claims to the jury and have  
11 an agreement that it would result in a judgment for or against  
12 the plaintiff on all of the claims so that we don't have to  
13 prepare hundred-page jury instructions for these poor folks  
14 and ask them to wade through all that.

15 I think the same thing would be true for the  
16 declaratory relief counterclaim that the defense has asserted,  
17 if we could come to a similar understanding on that. So all  
18 we have to give them is a Lanham Act trademark infringement  
19 claim, and then they can run with that.

20 I'm on page 28 now of the pretrial conference order.  
21 And under Affirmative Defense No. 3, abandonment, under  
22 subparagraph 2, it says JIPC acted or failed to act so that  
23 the primary significance of the JIPC marks to perspective  
24 purchasers has become JIPC's goods and services themselves and  
25 not JIPC.

1 MR. KLEIN: No, your Honor.

2 THE COURT: Defense?

3 MR. BERNARD: Just, your Honor, I should have done  
4 this at the beginning. I just wanted to thank you for  
5 approving our pro hac admissions, and it's a pleasure to be in  
6 the court.

7 THE COURT: Well, we love to have you here. Thank  
8 you very much.

9 Okay, Counsel. Thank you.

10

11 (Proceedings concluded at 10:50 A.M.)

12

13 **C E R T I F I C A T E**

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16 I hereby certify that pursuant to Title 28,  
17 Section 753 United States Code, the foregoing is a true and  
18 correct transcript of the stenographically reported  
19 proceedings in the above matter.

20 Certified on July 14, 2009.

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23

24 **MARK SCHWEITZER, CSR, RPR, CRR**  
25 Official Court Reporter  
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